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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,739	04/01/2004	Andrew William Kneier		7208

7590 08/23/2005
 Andrew W. Kneier
 265 Giles Street
 Nevada City, CA 95959

EXAMINER

BURNHAM, SARAH C

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,739

Applicant(s)

KNEIER, ANDREW WILLIAM

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-12 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 4 and 6-10 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/8/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 11 and 12 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The product as claimed in claims 3-10 need not be used by the method set forth in claims 11-12. For example, the seat occupant need not stand in front of the chair facing away from the chair, but could climb up on the chair in a forward facing direction. Secondly, the seat occupant need not place hands onto the front end of the arms, but could instead use the seat for balance.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11-12 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

2. The information referred to in the information disclosure statements filed on April 8, 2005 has been considered as to the merits.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 3-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not disclose: (1) first and second back posts having lengths of about 42 inches, (2) back posts extending downward about 22 inches from the seat, (3) side panels having bases of about 22 inches, (4) each side panel having a substantially rectangular portion removed from a front upper corner, (5) the rectangular portion being about 8 inches in height and between about 7 and 9 inches in depth, (6) an upper edge being about 14 inches in length, (7) a front edge of a foot rest being not less than 7 inches and not more than 9 inches from the back edge, (8) first and second arms secured to back posts at a height about 4 inches above the seat and (9) a lower face extending about 4 inches below the front edge of the footrest.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recites that the composite comprises glass-filled polymers. However claim 9 does not specify that the seat is made from composite, but

simply states it as an option. It appears as if an intervening claim is needed stating that at least one material is a composite. Clarification is requested.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4, 6-7 and 9 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Parker (2,536,767). Parker discloses a chair (Figure 1) comprising: a substantially rectangular seat (10) having an underside (seen in Figure 1), a front seat edge (unlabeled) defined forward of hinge (14), a back seat edge (unlabeled) defined at molding (17) and first and second opposing side seat edges (unlabeled), and further having first and second back seat corners (unlabeled) formed at the intersections of the back edge with the first and second side seat edges; first and second back posts (shown best in Figure 1 as feet) being secured to the seat (10) at the first and second back seat corners by way of panel member (2), first and second side panels (1)(3), each side panel having a substantially rectangular portion removed from a front upper corner thereof as seen in Figure 3, the upper edges of the side panels (1)(3) supporting the seat (10) and the back edges being supported by the back posts; a substantially rectangular footrest (20) stationarily disposed on and supported by the side panels (1)(3), the foot rest (20) having a width

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substantially the same as the width of the seat (see Figure 4); a front edge (unlabeled) and a back edge (21); two front corners (unlabeled) and an underside (unlabeled) and first and second front legs secured to the underside of the footrest (20) by way of panel (4) at the front corners and extending below the footrest whereby an individual sitting on the seat (10) is able to conveniently put on and remove footwear when the feet of the individual are placed on the footrest.

With respect to claim 4, a storage compartment (8) is disposed below the seat (10).

With respect to claim 6, an upper face (5) having a width substantially the same as the width of the seat (10), the upper face (5) extending below the front seat edge (unlabeled) to the back edge (21) of the footrest (20).

With respect to claim 7, a lower face (4) having a width substantially the same as the width of the seat (10), the lower face (4) extending below the front edge (unlabeled) of the footrest (20).

With respect to claim 9, the chair is constructed of "plywood" (column 1, line 24).

Parker discloses all claimed elements with the exception of the specifically claimed dimensions. It would have been an obvious matter of design choice to use the specified dimensions since such a modification would have merely involves a change in size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

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9. Claim 8 is rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Parker (2,526,767) in view of Hook (910,818). As disclosed above, Parker, as modified, discloses all claimed elements with the exception of a ladder-back with three ladder-back supports.

Hook discloses a ladder back (13) with ladder-back supports.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add the ladder back with supports to the seat disclosed by Parker. Such a modification would improve the stability of the seat occupant. Furthermore, it would have been an obvious matter of design choice to specify that the ladder-back supports have width of about 2.5 inches. Again, such a modification merely involves a change in the size of a component which is generally recognized as being within the level of ordinary skill in the art.

10. Claim 10 is rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Parker (2,526,767) in view of Rashidy et al. (US 2005/0134091). As disclosed above, Parker reveals all claimed elements with the exception of a composite comprised of glass-filled polymers.

Rashidy teaches the use of "composite materials such as glass-filled polymers" (paragraph [0074]) for forming crossbeams for supporting vehicle seats.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to use the material disclosed by Rashidy to form the seat disclosed by Parker. Such a modification would improve the strength and durability of the device.

Allowable Subject Matter

11. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112,1st and 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Amendment/Arguments

12. The amendment filed on June 23, 2005 has been considered in its entirety. Remaining issues are detailed in the sections above. The arguments with respect to Best are moot in view of the new grounds of rejection set forth above. Applicant argues that it would not have been obvious to modify seat dimensions to conform to the claimed dimensions. The Examiner asserts that the seat disclosed by Parker would function equally as well as the seat disclosed by the applicant and contends that the dimensions are therefore an issue of design choice.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hook (910,018); Wills et al. (US 2003/0107247) and Baker (575,941).

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

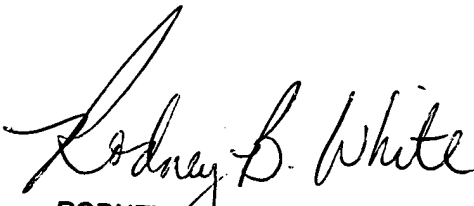
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SCB
August 18, 2005


RODNEY B. WHITE
PRIMARY EXAMINER